IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.258 OF 2000

Otis Elevator Company (I) Ltd. ...Petitioners

Versus

M/s.Sakeena Builders & Developers Pvt.Ltd. ...Respondents

.....

Mr.Colabawala i/b Mulla & Mulla & Craigie Blunt & Caroe for Petitioners.

None for Respondents.

.....

**CORAM: A.M.KHANWILKAR, J.**

**JULY 22, 2005.**

**P.C.**

1. Heard Counsel for the Petitioners. None appears for the Respondents though served. No reply has been filed opposing this Petition. In that sense, assertions made in this Petition have remained uncontroverted.

2. Petitioners' case is that the Petitioners

supplied two elevators to the Respondent Company as per the requisition. The elevators have been duly installed and made operational. The Respondent accepted delivery of the said elevators without any demur. When the Petitioners insisted for the payment towards the elevators supplied to the Respondent Company, the Respondent Company initially took the stand that unless license was granted by the appropriate authority to make the elevators operational, the question of making payment does not arise. Subsequently, even license has been issued in respect of the elevators supplied by the Petitioners. Even then no payment was received by the Respondent Company.

3. Inspite of repeated reminders, when no response was forthcoming, Petitioners gave statutory notice to the Respondent Company on 13th February 1999. In reply to the said statutory notice, the Respondent Company vide letter dated 13th April 1999 has, in terms, acknowledged the liability to pay the amount but has mentioned that due to financial crisis and the market condition at the relevant time, they were not in a position to

pay the balance amount in time. In passing, it is mentioned in the same reply that due to delay in obtaining licence by the Petitioners in respect of the elevators, it has cascading effect on handing over possession of the respective flats, since they could not obtain occupation certification for the building. It is then mentioned that due to delay in seeking of occupation certificate, the purchasers of the respective flats did not pay the entire flat consideration for long time. Even on fair reading of the said reply dated 13th April 1999, nowhere the Respondent Company has disputed its liability to pay the amount, but only mentioned the reasons which have resulted in delaying the payment. After the said reply, there was further correspondence entered between the parties, insisting that at least the principal amount be made over to the Petitioners and the interest component can be finalised after deliberations. The Respondent Company, on the other hand, insisted to resolve that issue first, without offer to pay even the principal amount to the Petitioners, which was acknowledged and undisputed.

4. The defence as taken by the Respondent in the reply sent to the statutory notice, in my opinion, cannot be said to be bonafide or honest. Be that as it may, as no amount was received by the Petitioners, Petitioners were driven to file the present Petition on 13th December 1999. Before admitting this Petition, notice was given to the Respondent Company, but the Respondent Company did not choose to remain present which resulted in order of admission of the Petition on June 22, 2000. Petition has been duly advertised and published in terms of order dated June 22, 2000. Inspite of service of the present Petition, the Respondent Company had not chosen to appear before this Court nor any reply has been filed controverting the assertions made in the Petition. In that sense, the averments in the Petition have remained uncontroverted. It necessarily follows that the Respondents have failed to rebut the legal presumption arising against the Respondent that the Company is unable to pay its debt.

5. In such a situation, this Court has no option but to accede to the prayer made in terms of

Paragraph 20(a) and 20(b) with cost. Ordered accordingly.

A.M.KHANWILKAR, J.